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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBIN DUBOC KIMBELL,
Plaintiff,
v.
DR. STEPHEN BENNER, et al.,
Defendants.

Case No. CV 17-4767 FMO (SS)

MEMORANDUM AND ORDER
DISMISSING FIRST AMENDED
COMPLAINT WITH LEAVE TO AMEND

I.

INTRODUCTION

On June 28, 2017, plaintiff Robin Duboc Kimbell ("Plaintiff"), a California resident proceeding pro se, filed a civil rights complaint (Dkt. No. 1), which the Court dismissed with leave to amend due to defects in pleading (Dkt. No. 10). Pending before the Court is Plaintiff's First Amended Complaint ("FAC"). (Dkt. No. 13).

Congress mandates that district courts perform an initial screening of complaints in civil actions where a prisoner seeks

1 redress from a governmental entity or employee. 28 U.S.C.
2 § 1915A(a). The court may dismiss such a complaint, or any portion
3 of it, before service of process if it concludes that the complaint
4 (1) is frivolous or malicious, (2) fails to state a claim upon
5 which relief can be granted, or (3) seeks monetary relief from a
6 defendant who is immune from such relief. 28 U.S.C. § 1915A(b);
7 see also Lopez v. Smith, 203 F.3d 1122, 1126-27 & n.7 (9th Cir.
8 2000) (en banc). For the reasons stated below, the First Amended
9 Complaint is DISMISSED with leave to amend.¹

11 II.

12 ALLEGATIONS OF THE FIRST AMENDED COMPLAINT

13
14 The facts underlying the Complaint and the First Amended
15 Complaint are largely the same. Plaintiff's forty-one page First
16 Amended Complaint asserts nine different claims against eighteen
17 Defendants. Many of the Defendants are government officials of
18 the United States and the Republic of Austria, including the
19 Austrian minister of justice, several United States Attorneys, and
20 officials in the United States Department of Justice. Plaintiff
21 also sues her former husband and a United States District Judge.
22 Specifically, the First Amended Complaint names: (1) Dr. Stephen
23 Benner, Minister of Justice, Republic of Austria; and (2) Dr. Peter
24 Seda, Public Prosecutor, Vienna Municipal Criminal Court
25 (collectively, "Austrian Defendants"). (FAC ¶¶ 4-5). The First

26
27 ¹ A magistrate judge may dismiss a complaint with leave to amend
28 without the approval of a district judge. See McKeever v. Block,
932 F.2d 795, 798 (9th Cir. 1991).

1 Amended Complaint also names: (3) F. Michael Patterson, United
2 States Attorney, Northern District of Florida; (4) J.D. Roy
3 Atcheson, United States Attorney, Northern District of Florida;
4 (5) Thomas F. Kirwin, Assistant United States Attorney, Northern
5 District of Florida; (6) Randall J. Hensel, Assistant United States
6 Attorney, Northern District of Florida; (7) Robert J. Stinson,
7 Assistant United States Attorney, Northern District of Florida;
8 (8) Gregory R. Miller, United States Attorney, Northern District
9 of Florida; (9) Linda M. Samuel, Assistant United States Attorney,
10 Northern District of Florida; (10) Dave McGee, Assistant United
11 States Attorney, Northern District of Florida; (11) Mary Ellen
12 Warlow, Director, Office of International Affairs, United States
13 Department of Justice; (12) Kendall Day, Chief, Asset Forfeiture,
14 United States Department of Justice; (13) Maurice M. Paul
15 (deceased), District Court Judge; (14) Robert Davies, Assistant
16 United States Attorney, Northern District of Florida; (15) James
17 Hankinson, Assistant United States Attorney, Northern District of
18 Florida; and (16) Michael J. Burke, Trial Attorney, United States
19 Department of Justice (collectively, "Federal Defendants"). (FAC
20 ¶¶ 6-18, 21). Finally, the First Amended Complaint names (17)
21 Claude Louis Duboc ("Duboc"), Plaintiff's former husband, and (18)
22 the Banque Gutmann Administrators ("Banque Gutmann"), Vienna,
23 Austria. (FAC ¶¶ 19-20). All Defendants are sued in their official
24 capacities. (FAC ¶¶ 4-21)

25
26 The First Amended Complaint's allegations concern the
27 forfeiture of an Austrian bank account that was seized in
28 connection with the criminal conviction of Plaintiff's former

1 husband. Plaintiff asserts she was an innocent spouse and was
2 entitled to the funds based on certain agreements with her former
3 husband. She claims that by executing the forfeiture, Defendants
4 violated her civil rights pursuant to 42 U.S.C. § 1983, conspired
5 to violate her civil rights pursuant to 42 U.S.C. § 1985, as well
6 as engaged in the wrongful taking and retention of property, fraud,
7 breach of contract, intentional infliction of emotional distress,
8 and other statutory and tort claims.

10 III.

11 DISCUSSION

12
13 Under 28 U.S.C. § 1915A(b), the Court must dismiss Plaintiff's
14 First Amended Complaint due to multiple pleading defects. However,
15 the Court must grant a pro se litigant leave to amend her defective
16 complaint unless "it is absolutely clear that the deficiencies of
17 the complaint could not be cured by amendment." Akhtar v. Mesa,
18 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal
19 quotation marks omitted). Accordingly, for the reasons stated
20 below, the First Amended Complaint is DISMISSED with leave to
21 amend.²

23
24 ² Under 28 U.S.C. § 1367(a), if a district court has original
25 jurisdiction over one or more claims, the court also has
26 supplemental jurisdiction over all state law claims that arise out
27 of the same transaction or occurrence. 28 U.S.C. § 1367(a).
28 However, if all federal claims have been dismissed, the district
court no longer has supplemental jurisdiction over the state law
claims. Id. Here, the Court has dismissed all of Plaintiff's
federal claims with, leave to amend. As a result, the Court no
longer has jurisdiction over Plaintiff's state law claims.

1 **A. The First Amended Complaint Violates Federal Rule Of Civil**
2 **Procedure 8**

3
4 Federal Rule of Civil Procedure 8 requires that a complaint
5 contain "a short and plain statement of the claim showing that the
6 pleader is entitled to relief in order to give the defendant fair
7 notice of what the claim is and the grounds upon which it rests."
8 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation and
9 alteration omitted). Each claim must be simple, concise, and
10 direct. Fed. R. Civ. P. 8(d)(1). Rule 8 can be violated when "too
11 much" or "too little" is said. Knapp v. Hogan, 738 F.3d 1106, 1109
12 (9th Cir. 2013).

13
14 Here, the First Amended Complaint does not comply with Rule
15 8. Plaintiff does not clearly and concisely identify the nature
16 of each of her legal claims, the specific facts giving rise to each
17 claim, and the specific conduct of each Defendant or Defendants
18 against whom each claim is brought. The First Amended Complaint
19 is not a short and plain statement of Plaintiff's claims. Rather,
20 it consists of rambling, repetitious and largely incoherent
21 statements. It includes unnecessarily long and often irrelevant
22 factual allegations and extraneous argument. Instead of focusing
23 and narrowing the claims in her Complaint, Plaintiff's First
24 Amended unnecessarily contains over 40 pages and 125 paragraphs.
25 Consequently, the FAC fails to provide a simple, concise and direct

26
27 _____
28 Accordingly, Plaintiff's state law claims are dismissed without
prejudice.

1 statement of each violation alleged. Thus, the First Amended
2 Complaint fails to provide Defendants with fair notice of the
3 claims in a short, clear and concise statement. See Twombly, 550
4 U.S. at 555. Accordingly, the First Amended Complaint is dismissed,
5 with leave to amend.

6
7 Dismissal is appropriate based solely on Plaintiff's failure
8 to comply with Rule 8. However, to the extent that the Court is
9 able to discern claims that Plaintiff may be attempting to raise,
10 the Court reviews these claims and the relevant law below.

11
12 **B. Plaintiff Fails To State Any Claim Against Either Duboc Or**
13 **Banque Gutmann**

14
15 In order to state a claim, the complaint need not contain
16 detailed factual allegations, but it must, at a minimum, plead
17 "enough facts to state a claim to relief that is plausible on its
18 face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A
19 claim has facial plausibility when the plaintiff pleads factual
20 content that allows the court to draw the reasonable inference that
21 the defendant is liable for the misconduct alleged." Ashcroft v.
22 Iqbal, 556 U.S. 662, 678 (2009). A pleading that offers "labels
23 and conclusions" or "a formulaic recitation of the elements of a
24 cause of action will not do." Twombly, 550 U.S. at 555.
25 "Threadbare recitals of the elements of a cause of action,
26 supported by mere conclusory statements, do not suffice." Iqbal,
27 556 U.S. at 678.

1 Here, other than generally describing who Duboc and Banque
2 Gutmann are (FAC ¶¶ 19-20), the First Amended Complaint does not
3 tie either of these Defendants to any of the nine alleged claims
4 (FAC ¶¶ 69-118). As a result, Plaintiff fails to state any claim
5 against Duboc or Banque Gutmann, and Plaintiff's claims against
6 Duboc and Banque Gutmann must be dismissed, with leave to amend.

7
8 **C. Plaintiff Fails To State A Civil Rights Claim Against Any Of**
9 **The Austrian Defendants Or The Federal Defendants**

10
11 Plaintiff purports to sue each of the Austrian Defendants and
12 Federal Defendants for violations of her civil rights pursuant to
13 42 U.S.C. § 1983. (FAC at 1-10). To gain relief under § 1983, a
14 plaintiff must plead: "(1) a violation of rights protected by the
15 Constitution or created by federal statute, (2) proximately caused
16 (3) by conduct of a 'person' (4) acting under color of state law."
17 Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991). Acts
18 " 'under color of state law' refer to acts attributable to states
19 of the United States." Gerritsen v. de la Madrid Hurtado, 819 F.2d
20 1511, 1518 (9th Cir. 1987). A defendant acts "under color of state
21 law" where he or she "exercised power possessed by virtue of state
22 law and made possible only because the wrongdoer is clothed with
23 the authority of state law." West v. Atkins, 487 U.S. 42, 49
24 (1988). "Although federal officials acting under federal authority
25 are generally not considered to be state actors, they may be liable
26 under § 1983 if they are found to have conspired with or acted in
27 concert with state officials to some substantial degree." Cabrera
28 v. Martin, 973 F.2d 735, 742 (9th Cir. 1992). Thus, because

1 "federal officials do not ordinarily act under color of state
2 law[,] . . . constitutional violations by federal officials are
3 generally beyond the reach of § 1983." Poon v. Doe, No. 10 CV
4 0028, 2010 WL 307924, at *3 (E.D. Cal. Jan. 19, 2010); see Kali v.
5 Bowen, 854 F.2d 329, 331 (9th Cir. 1988) ("federal officials who
6 violate federal rights protected by § 1983 generally do not act
7 under 'color of state law' ") (citation and alteration omitted).
8 Similarly, acts by a foreign government and its officials "cannot
9 constitute conduct under color of state law." Gerritsen, 819 F.2d
10 at 1515.

11
12 Here, the First Amended Complaint does not allege how any of
13 the Austrian Defendants or Federal Defendants acted under color of
14 state law. None of these Defendants are alleged to have exercised
15 any power possessed by virtue of state law. To the contrary, the
16 First Amended Complaint alleges that these Defendants used their
17 authority as federal officials and Austrian government officials
18 to illegally seize assets belonging to Plaintiff in an Austrian
19 bank account. These alleged actions do not amount to acting under
20 color of state law. Accordingly, Plaintiff's § 1983 claims against
21 the Austrian Defendants and the Federal Defendants must be
22 dismissed, with leave to amend.

23
24 **D. Plaintiff Fails To State A Claim Against The Federal**
25 **Defendants In Their Official Capacities**

26
27 A suit for damages against a federal employee in his or her
28 official capacity is functionally a suit against the United States.

1 Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985); see
2 Gibson v. United States, 781 F.2d 1334, 1341 (9th Cir. 1986) (noting
3 that Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics,
4 403 U.S. 388 (1971), is “the judicially crafted counterpart to
5 section 1983, enable[ing] victims of federal misconduct to sue the
6 individual federal wrongdoers responsible for the transgression of
7 their rights”). However, a civil rights action against a federal
8 defendant may be brought only against an offending individual
9 officer or officers, not the United States or its agencies. Corr.
10 Servs. Corp. v. Malesko, 534 U.S. 61, 72 (2001); see id. at 70-71
11 (explaining that because the “purpose of Bivens is to deter
12 individual federal officers from committing constitutional
13 violations,” the “deterrent effects of the Bivens remedy would be
14 lost” if the Court “were to imply a damages action directly against
15 federal agencies”). As such, no cause of action is available under
16 Bivens against federal employees sued in their official
17 capacities.³ Ibrahim v. Dep’t of Homeland Sec., 538 F.3d 1250, 1257
18 (9th Cir. 2008).

19
20 Here, the First Amended Complaint names each Federal Defendant
21 in his or her official capacity. (FAC ¶¶ 6-18, 21). However, as
22 stated above, no cause of action is available under Bivens against
23 federal employees in their official capacities. Accordingly,

24 ³ The First Amended Complaint does not explicitly characterize any
25 of Plaintiff’s claims as brought under Bivens. However, because
26 Plaintiff is proceeding pro se, the Court must liberally construe
27 the pleading. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per
28 curiam); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (“[W]e
continue to construe pro se filings liberally when evaluating them
under [Ashcroft v. Iqbal, 556 U.S. 662 (2009)]”.

1 Plaintiff's official capacity claims against the Federal Defendants
2 must be dismissed, with leave to amend.

3
4 **E. Plaintiffs' Bivens Claims May Not Be Cognizable**

5
6 The Supreme Court reiterated recently that expanding the
7 Bivens remedy beyond those contexts the Supreme Court has
8 previously recognized is "disfavored." Ziglar v. Abbasi, 137 S.
9 Ct. 1843, 1857 (2017); see Ashcroft v. Iqbal, 556 U.S. 662, 675
10 (2009) ("Because implied causes of action are disfavored, the Court
11 has been reluctant to extend Bivens liability to any new context
12 or new category of defendants.") (citation omitted); Corr. Servs.
13 Corp. v. Malesko, 534 U.S. 61, 74 (2001) (urging "caution" before
14 "extending Bivens remedies into any new context"); see also
15 Gonzalez v. Velez, 864 F.3d 45, 52 (1st Cir. 2017) ("While the
16 boundaries of Bivens-type liability are hazy, the Supreme Court,
17 in its most recent term, made plain its reluctance to extend the
18 Bivens doctrine to new settings."). In Bivens, the Supreme Court
19 held that a Fourth Amendment violation by federal agents - an
20 illegal search of an individual's home - while acting under color
21 of governmental authority, gave rise to a cause of action for money
22 damages against those agents in their individual capacities. 403
23 U.S. at 389. Since deciding Bivens, the Supreme Court has
24 recognized an implied right of action for constitutional torts by
25 federal actors in only two other contexts. See Davis v. Passman,
26 442 U.S. 228, 243-44 (1979) (Fifth Amendment gender
27 discrimination); Carlson v. Green, 446 U.S. 14, 20-23 (1980)
28 (Eighth Amendment medical mistreatment). Indeed, over the last 30

1 years, the Court has "consistently refused to extend Bivens
2 liability to any new context or new category of defendants."
3 Malesko, 534 U.S. at 68; accord Abbasi, 137 S. Ct. at 1857. The
4 Court has declined to create an implied damages remedy in the
5 following circumstances: a First Amendment suit against a federal
6 employer, Bush v. Lucas, 462 U.S. 367, 390 (1983); a race-
7 discrimination suit against military officers, Chappell v. Wallace,
8 462 U.S. 296, 297, 304-05 (1983); a substantive due process suit
9 against military officers, United States v. Stanley, 483 U.S. 669,
10 671-72, 683-84 (1987); a procedural due process suit against Social
11 Security officials, Schweiker v. Chilicky, 487 U.S. 412, 414
12 (1988); a procedural due process suit against a federal agency for
13 wrongful termination, FDIC v. Meyer, 510 U.S. 471, 473-74 (1994);
14 an Eighth Amendment suit against a private prison
15 operator, Malesko, 534 U.S. at 63; a due process suit against
16 officials from the Bureau of Land Management, Wilkie v. Robbins,
17 551 U.S. 537, 547-48, 562 (2007); an Eighth Amendment suit against
18 prison guards at a private prison, Minnecci v. Pollard, 565 U.S.
19 118, 120 (2012); and Fourth and Fifth Amendment detention policy
20 claims against Department of Justice officials and wardens related
21 to restrictive conditions of confinement and frequent strip
22 searches, Abbasi, 137 S. Ct. at 1853-54, 1863.

23
24 Abbasi clarifies that "a Bivens remedy will not be available
25 if there are special factors counselling hesitation in the absence
26 of affirmative action by Congress." 137 S. Ct. at 1857. While
27 the Supreme Court has not defined the phrase "special factors
28 counselling hesitation," "[t]he necessary inference . . . is that

1 the inquiry must concentrate on whether the Judiciary is well
2 suited, absent congressional action or instruction, to consider
3 and weigh the costs and benefits of allowing a damages action to
4 proceed." Id. at 1857-58. "These and other considerations may
5 make it less probable that Congress would want the Judiciary to
6 entertain a damages suit in a given case." Id. at 1858.

7
8 Here, none of Plaintiff's claims fits into an existing Bivens
9 cause of action. To the contrary, multiple Supreme Court decisions
10 have rejected extending Bivens for due process violations. See
11 Chilicky, 487 U.S. at 414; Meyer, 510 U.S. at 473-74; Robbins, 551
12 U.S. at 547-48, 562. Accordingly, to the extent that the First
13 Amended Complaint is making any Bivens claims, they must be
14 dismissed, with leave to amend.

15
16 **F. The Federal Defendants May Be Entitled To Immunity**

17
18 Prosecutorial immunity protects eligible government officials
19 who perform functions "intimately associated with the judicial
20 phase of the criminal process." Imbler v. Pachtman, 424 U.S. 409,
21 430 (1976). "A prosecutor is protected by absolute immunity from
22 liability for damages under § 1983 'when performing the traditional
23 functions of an advocate.' " Genzler v. Longanbach, 410 F.3d 630,
24 636 (9th Cir. 2005) (quoting Kalina v. Fletcher, 522 U.S. 118, 131
25 (1997)). Absolute immunity applies even if it " 'leave[s] the
26 genuinely wronged defendant without civil redress against a
27 prosecutor whose malicious or dishonest action deprives him of
28 liberty.' " Genzler, 410 F.3d at 637 (quoting Imbler v. Pachtman,

1 424 U.S. 409, 432 (1976)). The immunity extends to all "acts
2 undertaken by a prosecutor in preparing for the initiation of
3 judicial proceedings or for trial, and which occur in the course
4 of his role as an advocate for the State." Buckley v. Fitzsimmons,
5 509 U.S. 259, 273 (1993). Thus, "[federal] officials enjoy
6 absolute immunity from civil liability related to their performance
7 of 'prosecutorial' functions." Koubriti v. Convertino, 593 F.3d
8 459, 467 (6th Cir. 2010); see Richards v. Boudreau, 62 F.3d 1425
9 (9th Cir. 1995) ("[federal] defendants were entitled to sovereign
10 and prosecutorial immunity to the extent they were sued in their
11 official capacities, and to qualified immunity to the extent the
12 complaint challenged their actions outside their official
13 capacities"). Similarly, "Judges are immune from damage actions
14 for judicial acts taken within the jurisdiction of their courts."
15 Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986); see Snegirev
16 v. Sedwick, 407 F. Supp. 2d 1093, 1096 (D. Alaska 2006) ("Judges
17 enjoy absolute immunity from Bivens suits for their rulings, even
18 if those rulings are clearly erroneous and maliciously
19 motivated."); Pangelinan v. Wiseman, 370 F. App'x 818, 819 (9th
20 Cir. 2010) ("The district court properly concluded that the judges
21 were immune to the extent they were sued for claims arising from
22 their decisions in [plaintiff's] lawsuits."); Donaghe v. United
23 States, 238 F.3d 428 (9th Cir. 2000) ("The district court properly
24 dismissed Donaghe's Bivens claims based on judicial and
25 prosecutorial immunity.").

26
27 Here, the First Amended Complaint alleges that as part of
28 their official duties as United States Attorneys, Assistant United

1 States Attorneys and District Court Judge, the Federal Defendants
2 wrongfully seized assets belonging to Plaintiff. Accordingly, the
3 claims against the Federal Defendants must be dismissed on immunity
4 grounds.

5
6 **G. Plaintiff's Claims May Be Time-Barred**

7
8 Civil rights claims under 42 U.S.C. §§ 1983 and 1985 and
9 Bivens are all subject to the forum state's statute of limitations
10 for personal injury claims. Owens v. Okure, 488 U.S. 235, 236
11 (1989); Van Strum v. Lawn, 940 F.2d 406, 410 (9th Cir. 1991); see
12 Carpinteria Valley Farms, Ltd. v. County of Santa Barbara, 344 F.3d
13 822, 828 (9th Cir. 2003) ("The applicable statute of limitations
14 for actions brought pursuant to 42 U.S.C. § 1983 is the forum
15 state's statute of limitations for personal injury actions.").
16 "Under federal law, a claim accrues when the plaintiff knows or
17 has reason to know of the injury which is the basis of the action."
18 TwoRivers v. Lewis, 174 F.3d 987, 991 (9th Cir. 1999). Effective
19 January 1, 2003, the statute of limitations for
20 personal injury actions in California is two years. Cal. Code Civ.
21 Proc. § 335.1."

22
23 Here, Plaintiff alleges that the "wrongful forfeiture actions"
24 by Defendants began in 1996 and continued through 2004. (FAC ¶¶ 2,
25 31-43). Thus, it appears that Plaintiff's claims may be time-
26 barred by the two-year statute of limitations.

1 **H. Plaintiff Fails To State A Due Process Claim**

2
3 In Claim 1, Plaintiff alleges that the Gutmann Bank Account
4 was seized by Defendants without due process of law, as required
5 by the Fifth and Fourteenth Amendments. (FAC ¶¶ 69-73). The Due
6 Process Clause of the Fifth Amendment forbids the federal
7 government from depriving persons of "life, liberty, or property,
8 without due process of law." U.S. Const. amend. V. "The Due
9 Process Clause, like its forebear in the Magna Carta . . . was
10 intended to secure the individual from the arbitrary exercise of
11 the powers of government." Daniels v. Williams, 474 U.S. 327, 331
12 (1986) (citation omitted). "By requiring the government to follow
13 appropriate procedures when its agents decide to 'deprive any
14 person of life, liberty, or property,' the Due Process Clause
15 promotes fairness in such decisions." Id. To state a procedural
16 due process claim under § 1983, a plaintiff must allege "(1) a
17 liberty or property interest protected by the Constitution; (2) a
18 deprivation of the interest by the government; and (3) lack of
19 process." Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996); see
20 Buckingham v. Sec'y of U.S. Dep't of Agr., 603 F.3d 1073, 1081 (9th
21 Cir. 2010) ("To be entitled to procedural due process, a party must
22 show a liberty or property interest in the benefit for which
23 protection is sought.").

24
25 The adequacy of specific procedural protections may vary
26 according to context. However, the Ninth Circuit has explained
27 that "[i]n the absence of extraordinary circumstances, procedural
28 due process requires notice and an opportunity to be heard before

1 any governmental deprivation of a property interest. The form
2 which those procedural protections must take is determined by an
3 evaluation of all the circumstances and an accommodation of
4 competing interests." Tom Growney Equip., Inc. v. Shelley Irr.
5 Dev., Inc., 834 F.2d 833, 835 (9th Cir. 1987) (citing Boddie v.
6 Connecticut, 401 U.S. 371, 379 (1971)); see also McBride Cotton
7 and Cattle Corp. v. Veneman, 290 F.3d 973, 982 (9th Cir. 2005)
8 ("Generally, the Due Process Clause requires 'that individuals
9 receive notice and a meaningful opportunity to be heard before the
10 government deprives them of property.'" (quoting James Daniel Good
11 Real Prop., 510 U.S. 43, 48 (1993))).

12
13 Here, the First Amended Complaint acknowledges that the
14 Gutmann Bank account was included in the forfeiture action only
15 after multiple proceedings before the federal district court and
16 the Austrian courts. (FAC ¶¶ 35-51). Thus, it appears that
17 Plaintiff received the minimum due process required by the
18 Constitution. Accordingly, the procedural due process claim must
19 be dismissed, with leave to amend.

20
21 **I. Plaintiff Fails To State A Claim For Violation Of 18 U.S.C.**
22 **§ 1519**
23

24 In Claim 1, Plaintiff also alleges that Defendants violated
25 her due process rights "in breach of 18 U.S.C. § 1519." (FAC
26 ¶ 70). 18 U.S.C. § 1519 is a criminal statute that prohibits
27 destroying, altering, or falsifying records in a federal
28 investigation. "Plaintiffs may not premise civil liability on the

1 alleged violation of federal criminal statutes which do not
2 provide, as a general matter, private causes of action." Idema v.
3 Dreamworks, Inc., 162 F. Supp. 2d 1129, 1197 (C.D. Cal. 2001),
4 aff'd in part, dismissed in part on other grounds, 90 F. App'x 496
5 (9th Cir. 2003), as amended on denial of reh'g (Mar. 9, 2004).
6 Plaintiff has not shown that she has a private cause of action
7 under this statute. Accordingly, Plaintiff's claim for violation
8 of 18 U.S.C. § 1519 must be dismissed, with leave to amend.

9
10 **J. Plaintiff Fails To State A Claim Under Federal Rule of Civil**
11 **Procedure 9**

12
13 In Claim 2, Plaintiff alleges that Defendants' committed acts
14 of fraud in violation of Rule 9. (FAC ¶¶ 74-78). Rule 9 states
15 that "[i]n alleging fraud or mistake, a party must state with
16 particularity the circumstances constituting fraud or mistake."
17 Fed. R. Civ. P. 9(b). However, the Federal Rules of Civil Procedure
18 do not create a separate, private cause of action. See Port Drum
19 Co. v. Umphrey, 852 F.2d 148, 149-50 (5th Cir. 1988) (The Federal
20 Rules "only implement the exercise of jurisdiction otherwise
21 conferred by Congress and do not provide an independent basis for
22 parties without any other jurisdictional grant to get into federal
23 court in the first place."); Pineville Real Estate Operation Corp.
24 v. Michael, 32 F.3d 88, 90 (4th Cir. 1994) ("the Rules are not
25 "laws" . . . and . . . they cannot be the basis for federal
26 question jurisdiction"); accord Ins. Tr. v. River Trails Sch., No.
27 03 C 4889, 2003 WL 22016880, at *1 (N.D. Ill. Aug. 27, 2003);
28 Wentworth v. Hedson, 248 F.R.D. 123, 125 (E.D.N.Y. 2008); cf.

1 Church of Scientology Int'l v. Kolts, 846 F. Supp. 873, 878 (C.D.
2 Cal. 1994) ("while the Code [of Conduct for United States Judges]
3 may have the force of law, it does not seem to provide a grant of
4 jurisdiction"). Accordingly, Plaintiff's claim for violation of
5 Rule 9 must be dismissed, with leave to amend.

6
7 **K. Plaintiff Fails To State A Conspiracy Claim**

8
9 In Claim 4, Plaintiff alleges a conspiracy, in violation of
10 42 U.S.C. § 1985(3). (FAC ¶¶ 84-93). To state a cause of action
11 under § 1985(3), "a plaintiff must demonstrate a deprivation of a
12 right motivated by some racial, or perhaps otherwise class-based,
13 invidiously discriminatory animus behind the conspirators'
14 action." RK Ventures, Inc. v. City of Seattle, 307 F.3d 1045, 1056
15 (9th Cir. 2002) (citation omitted); accord Turner v. Larsen, 536
16 F. App'x 748 (9th Cir. 2013) ("The district court properly
17 dismissed Turner's § 1985(3) claim because Turner failed to allege
18 facts showing that a discriminatory animus motivated the alleged
19 conspiracy to deprive him of his rights."); Tanasescu v. Kroger
20 Co., No. SACV 14-1437, 2014 WL 10518286, at *8 (C.D. Cal. Aug. 20,
21 2014), report and recommendation adopted, No. SACV 14-1437, 2015
22 WL 5768380 (C.D. Cal. Sept. 29, 2015) ("To state a cognizable claim
23 under . . . § 1985(3), a plaintiff must show that racial or class-
24 based animus motivated the defendants."). Further, a § 1985(3)
25 claim "must allege facts to support the allegation that defendants
26 conspired together. A mere allegation of conspiracy without
27 factual specificity is insufficient." Karim-Panahi v. Los Angeles
28 Police Dep't, 839 F.2d 621, 626 (9th Cir. 1988).

1 Plaintiff does not allege facts showing that Defendants
2 conspired to deprive her of equal protection of the laws due to
3 her membership in a protected class. Nor does Plaintiff provide
4 specific factual allegations supporting her conspiracy claim.
5 Therefore, Plaintiff's allegations in Claim 4 are improper.
6 Accordingly, the conspiracy claim must be dismissed, with leave to
7 amend.

8
9 **V.**

10 **CONCLUSION**

11
12 For the reasons stated above, the First Amended Complaint is
13 dismissed with leave to amend. If Plaintiff still wishes to pursue
14 this action, she is granted **thirty (30) days** from the date of this
15 Memorandum and Order within which to file a Second Amended
16 Complaint. In any amended complaint, the Plaintiff shall cure the
17 defects described above. **Plaintiff shall not include new**
18 **defendants or new allegations that are not reasonably related to**
19 **the claims asserted in the original complaint.** The Second Amended
20 Complaint, if any, shall be complete in itself and shall bear both
21 the designation "Second Amended Complaint" and the case number
22 assigned to this action. It shall not refer in any manner to any
23 previously filed complaint in this matter. **PLAINTIFF IS**
24 **SPECIFICALLY ADVISED TO OMIT ANY CLAIMS THAT ARE BARRED BY A LACK**
25 **OF JURISDICTION OR ON IMMUNITY GROUNDS, unless those defects can**
26 **be corrected.**

1 In any amended complaint, Plaintiff should confine her
2 allegations to those operative facts supporting each of her claims.
3 Plaintiff is advised that pursuant to Federal Rule of Civil
4 Procedure 8(a), all that is required is a "short and plain statement
5 of the claim showing that the pleader is entitled to relief."
6 **Plaintiff is strongly encouraged to utilize the standard civil**
7 **rights complaint form when filing any amended complaint, a copy of**
8 **which is attached.** In any amended complaint, Plaintiff should
9 identify the nature of each separate legal claim and make clear
10 what specific factual allegations support each of her separate
11 claims. Plaintiff is strongly encouraged to keep her statements
12 concise and to omit irrelevant details. **It is not necessary for**
13 **Plaintiff to cite case law, include legal argument, or attach**
14 **exhibits at this stage of the litigation.** Plaintiff is also advised
15 to omit any claims for which she lacks a sufficient factual basis.
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Plaintiff is explicitly cautioned that failure to timely file a Second Amended Complaint or failure to correct the deficiencies described above, will result in a recommendation that this action be dismissed with prejudice for failure to prosecute and obey court orders pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff is further advised that is she no longer wishes to pursue this action, she may voluntarily dismiss it by filing a Notice of Dismissal in accordance with Federal Rule of Civil Procedure 41(a)(1). A form Notice of Dismissal is attached for Plaintiff's convenience.

DATED: February 26, 2018

/s/

 SUZANNE H. SEGAL
 UNITED STATES MAGISTRATE JUDGE

THIS ORDER IS NOT INTENDED FOR PUBLICATION IN WESTLAW, LEXIS,
OR ANY OTHER LEGAL DATABASE.